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DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SEVENTH SESSION

Rapporteur: Mr. Francisco Villagran Kramer

CHAPTER I

INTRODUCTION

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CHAPTER I

INTRODUCTION

1. The International Law Commission established in pursuance of General Assembly resolution 174 (II) of 21 November 1947, in accordance with its Statute annexed thereto, as subsequently amended, held its forty-seventh session at its permanent seat at the United Nations Office at Geneva, from 2 May to 21 July 1995.

A. Membership

2. The Commission consists of the following members:

Mr. Husain Al-Baharna (Bahrain)

Mr. Awn Al-Khasawneh (Jordan)

Mr. Gaetano Arangio-Ruiz (Italy)

Mr. Julio Barboza (Argentina)

Mr. Mohamed Bennouna (Morocco)

Mr. Derek William Bowett (United Kingdom)

Mr. Carlos Calero Rodrigues (Brazil)

Mr. James Crawford (Australia)

Mr. John de Saram (Sri Lanka)

Mr. Gudmundur Eiriksson (Iceland)

Mr. Nabil Elaraby (Egypt)

Mr. Salifou Fomba (Mali)

Mr. Mehmet Güney (Turkey)

Mr. Qizhi He (China)

Mr. Kamil Idris (Sudan)

Mr. Andreas Jacovides (Cyprus)

Mr. Peter Kabatsi (Uganda)

Mr. Mochtar Kusuma-Atmadja (Indonesia)

Mr. Igor Ivanovich Lukashuk (Russian Federation)

Mr. Ahmed Mahiou (Algeria)

Mr. Vaclav Mikulka (Czech Republic)

Mr. Guillaume Pambou-Tchivounda (Gabon)

Mr. Alain Pellet (France)

Mr. Pemmaraju Sreenivasa Rao (India)

Mr. Edilbert Razafindralambo (Madagascar)

Mr. Patrick Lipton Robinson (Jamaica)

Mr. Robert Rosenstock (United States)

Mr. Alberto Szekely (Mexico)

Mr. Doudou Thiam (Senegal)

Mr. Christian Tomuschat (Germany)

Mr. Edmundo Vargas Carreño (Chile)

Mr. Francisco Villagran Kramer (Guatemala)

Mr. Chusei Yamada (Japan)

Mr. Alexander Yankov (Bulgaria)

3. Mr. Igor Ivanovich Lukashuk (Russian Federation) was elected at the 2378th meeting of the Commission, on 2 May 1995, to fill the casual vacancy in the Commission created by the election of Mr. Vladlen Vereshchetin to the International Court of Justice.

B. Officers

4. At its 2378th and 2379th meetings on 2 and 3 May 1995, the Commission elected the following officers:

Chairman:	Mr. Pemmaraju Sreenivasa Rao
First Vice-Chairman:	Mr. Guillaume Pambou-Tchivounda
Second Vice-Chairman:	Mr. Mehmet Güney
Chairman of the Drafting Committee:	Mr. Alexander Yankov
Rapporteur:	Mr. Francisco Villagran Kramer

5. The Enlarged Bureau of the Commission was composed of the officers of the present session, those members of the Commission who had previously served as Chairman of the Commission, 1/ and the Special Rapporteurs. 2/ The Chairman of the Enlarged Bureau was the Chairman of the Commission. On the recommendation of the Enlarged Bureau, the Commission, at its 2379th meeting, on 3 May 1995, set up for the present session a Planning Group to consider the programme, procedures and working methods of the Commission and its documentation and to report thereon

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1/ Namely, Mr. Julio Barboza, Mr. Doudou Thiam, Mr. Christian Tomuschat and Mr. Alexander Yankov.

2/ Namely, Mr. Gaetano Arangio-Ruiz, Mr. Julio Barboza, Mr. Vaclav Mikulka, Mr. Alain Pellet and Mr. Doudou Thiam.

to the Enlarged Bureau. The Planning Group was composed of the following members: Mr. Guillaume Pambou-Tchivounda (Chairman), Mr. Mohamed Bennouna, Mr. Derek W. Bowett, Mr. John de Saram, Mr. Salifou Fomba, Mr. Mehmet Güney, Mr. Kamil Idris, Mr. Andreas Jacovides, Mr. Peter Kabatsi, Mr. Mochtar Kusuma-Atmadja, Mr. Vaclav Mikulka, Mr. Edilbert Razafindralambo, Mr. Robert Rosenstock and Mr. Edmundo Vargas Carreño.

6. The group was open to every member who wished to participate.

C. Drafting Committee

7. At its 2379th meeting, on 3 May 1995, the Commission agreed that the Drafting Committee would include, in addition to its Chairman, the following members for the three topics listed below:

Draft Code of Crimes against the Peace and Security of Mankind:

Mr. Husain Al-Baharna, Mr. James Crawford, Mr. Gudmundur Eiriksson, Mr. Qizhi He, Mr. Peter Kabatsi, Mr. Mochtar Kusuma-Atmadja, Mr. Igor I. Lukashuk, Mr. Guillaume Pambou-Tchivounda, Mr. Patrick Lipton Robinson, Mr. Robert Rosenstock, Mr. Alberto Szekely, Mr. Edmundo Vargas Carreño, Mr. Francisco Villagran Kramer and Mr. Chusei Yamada, as well as Mr. Doudou Thiam in his capacity as Special Rapporteur for the topic.

State responsibility

Mr. Husain Al-Baharna, Mr. Awn Al-Khasawneh, Mr. Julio Barboza, Mr. Derek W. Bowett, Mr. James Crawford, Mr. John de Saram, Mr. Gudmundur Eiriksson, Mr. Nabil Elaraby, Mr. Qizhi He, Mr. Igor I. Lukashuk, Mr. Alain Pellet, Mr. Edilbert Razafindralambo, Mr. Robert Rosenstock, Mr. Albert Szekely and Mr. Chusei Yamada, as well as Mr. Gaetano Arangio-Ruiz in his capacity as Special Rapporteur for the topic.

International liability for injurious consequences arising out of acts not prohibited by international law

Mr. Husain Al-Baharna, Mr. Derek W. Bowett, Mr. John de Saram, Mr. Gudmundur Eiriksson, Mr. Nabil Elaraby, Mr. Qizhi He, Mr. Igor I. Lukashuk, Mr. Edilbert Razafindralambo, Mr. Patrick Lipton Robinson, Mr. Robert Rosenstock, Mr. Albert Szekely and Mr. Christian Tomuschat as well as Mr. Julio Barboza in his capacity as Special Rapporteur for the topic.

8. Mr. Francisco Villagran Kramer participated in the work of the Drafting Committee in his capacity as Rapporteur of the Commission. He chaired the Committee in the absence of its Chairman.

D. Working Group on State Succession and its Impact on the Nationality of Natural and Legal Persons

9. At its 2393rd meeting, on 1 June 1995, the Commission established a Working Group on State Succession and its Impact on the Nationality of Natural and Legal Persons. It approved the following composition for the Working Group: Mr. Vaclav Mikulka (Chairman). Mr. Husain Al-Baharna, Mr. Awn Al-Khasawneh, Mr. Derek W. Bowett, Mr. James Crawford, Mr. Salifou Fomba, Mr. Kamil Idris, Mr. Igor I. Lukashuk, Mr. Robert Rosenstock, Mr. Albert Szekely, Mr. Christian Tomuschat, Mr. Edmundo Vargas Carreño and Mr. Chusei Yamada. The Working Group was open to every member who wished to participate.

E. Working Group on the Identification of Dangerous Activities under the topic "International liability for injurious consequences of acts not prohibited by international law"

10. At its 2393rd meeting, on 1 June 1995, the Commission established a Working Group on the Identification of Dangerous Activities under the topic "International liability for injurious consequences of acts not prohibited by international law". At its 2396th meeting on 8 June 1995, it approved the following composition for the Working Group: Mr. Julio Barboza (Chairman), Mr. John de Saram, Mr. Gudmundur Eiriksson, Mr. Nabil Elaraby, Mr. Salifou Fomba, Mr. Igor I. Lukashuk, Mr. Robert Rosenstock, Mr. Alberto Szekely and Mr. Chusei Yamada. The Working Group was open to every member who wished to participate.

F. Secretariat

11. Mr. Hans Corell, Under-Secretary-General for Legal Affairs, the Legal Counsel, attended the session and represented the Secretary-General. Ms. Jacqueline Dauchy, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary to the Commission and, in the absence of the Legal Counsel, represented the Secretary-General. Mr. Andronico O. Adede, Deputy Director of the Codification Division, served as Deputy Secretary to the Commission; Ms. Mahnoush H. Arsanjani, Senior Legal Officer, served as Senior Assistant Secretary to the Commission; Mr. Mpazi Sinjela and Ms. Christiane

Bourloyannis-Vrailas, Legal Officers, and Ms. Virginia Morris, Associate Legal Officer, served as Assistant Secretaries to the Commission.

G. Agenda

12. At its 2378th meeting, on 2 May 1995, the Commission adopted an agenda for its forty-seventh session consisting of the following items:

1. Filling of a casual vacancy.
2. Organization of work of the session.
3. State responsibility.
4. Draft Code of Crimes against the Peace and Security of Mankind.
5. International liability for injurious consequences arising out of acts not prohibited by international law.
6. The law and practice relating to reservations to treaties.
7. State succession and its impact on the nationality of natural and legal persons.
8. Programme, procedures and working methods of the Commission and its documentation.
9. Cooperation with other bodies.
10. Date and place of the forty-eighth session.
11. Other business.

13. The Commission considered all the items on its agenda. It held ... public meetings (2378th to ....th) and, in addition, the Drafting Committee of the Commission held 35 meetings, the Working Group on State Succession and its Impact on the Nationality of Natural and Legal Persons held 5 meetings, the Working Group on the Identification of Dangerous Activities under the topic "International liability for injurious consequences of acts not prohibited by international law" held 3 meetings, the Enlarged Bureau of the Commission held 2 meetings and the Planning Group of the Enlarged Bureau held 4 meetings.

H. General description of the work of the Commission at its forty-seventh session

14. In the framework of the topic "Draft Code of Crimes against the Peace and Security of Mankind" 3/ the Commission considered the thirteenth report of the Special Rapporteur, Mr. Doudou Thiam (A/CN.4/466 and Corr.1 (English only)). This report was prepared for the second reading of the draft Code adopted on first reading in 1991 and focused on the crimes against the peace and security of mankind contained in Part II of the draft Code.

15. After considering the Special Rapporteur's thirteenth report, the Commission decided to refer to the Drafting Committee articles 15 (Aggression), 19 (Genocide), 21 (Systematic or mass violations of human rights) and 22 (Exceptionally serious war crimes) for consideration as a matter of priority on second reading in the light of the proposals contained in the Special Rapporteur's thirteenth report and of the comments and proposals made in the course of the debate in plenary, on the understanding that, in formulating those articles, the Drafting Committee would bear in mind and at its discretion deal with all or part of the elements of the following draft articles as adopted on first reading: 17 (Intervention), 18 (Colonial domination and other forms of alien domination), 20 (Apartheid), 23 (Recruitment, use, financing and training of mercenaries) and 24 (International terrorism). The Commission further decided that consultations would continue as regards articles 25 (Illicit traffic in narcotic drugs) and 26 (Wilful and severe damage to the environment). As regards the latter article, the Commission subsequently decided to establish a working group that would meet at the beginning of the forty-eighth session to examine the possibility of covering in the draft Code the issue of wilful and severe damage to the environment.

16. The Commission received from the Drafting Committee the texts of articles adopted on second reading by the Committee further to the decision reflected in paragraph 15 above, namely, for inclusion in Part One, articles 1 (Scope and application of the present Code), 5 (Responsibility of States), 5 bis (Establishment of jurisdiction), 6 (Obligation to extradite or prosecute), 6 bis (Extradition of alleged offenders), 8 (Judicial guarantees), 9 (Non bis in idem), 10 (Non-retroactivity), 11 (Order of a Government or a

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3/ This topic was considered by the Commission at its 2379th to 2386th, 2404th, and 2408th to 2410th meeting held between 3 and 19 May and between 22 June and 4 July 1995.

superior), 12 (Responsibility of the superior), and 13 (Official position and responsibility); and, for inclusion in Part Two, articles 15 (Aggression) and 19 (Genocide).

17. The Commission noted that the recommendations of the Drafting Committee were of an interim character as some of the articles might call for review and should in any event be accompanied with commentaries. It accordingly decided to defer the final adoption of the above articles until after the completion of the remaining articles and to confine itself at the present session to taking note of the report of the Chairman of the Drafting Committee. 4/

18. In the framework of the topic "State succession and its impact on the nationality of natural and legal persons", 5/ the Commission considered the preliminary report of the Special Rapporteur, Mr. Vaclav Mikulka (A/CN.4/467). After considering the Special Rapporteur's preliminary report, the Commission decided to establish a Working Group on the topic. The Commission took note of the report of the Working Group and of the Special Rapporteur's intentions in relation to future work on the topic. 6/

19. In the framework of the topic "State responsibility", 7/ the Commission had before it the seventh report of the Special Rapporteur, Mr. Gaetano Arangio-Ruiz (A/CN.4/469 and Corr.1 (English only) and Add.1 and 2) which dealt, on the one hand, with the question of the legal consequences of internationally wrongful acts characterized as crimes under article 19 of Part One of the draft articles and, on the other hand, with the settlement of disputes relating to the legal consequences of crimes. After considering the seventh report of the Special

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4/ For an account of the treatment of the topic at the current session, see chapter II below.

5/ This topic was examined by the Commission at its 2387th to 2391st, 2411th and 2413th meetings held between 17 and 30 May and on 5 and 7 July 1995.

6/ For an account of the treatment of the topic at the present session, see chapter III below.

7/ This topic was examined by the Commission at its 2391st to 2398th, 2405th, 2417th and 2420th meetings held between 30 May and 9 June, on 27 June and on 14 and 18 July 1995.

Rapporteur, the Commission decided to refer the draft articles contained therein to the Drafting Committee.

20. The Commission furthermore received from the Drafting Committee a set of seven articles and an annex constituting Part Three of the draft on the settlement of disputes, namely articles 1 (Negotiation), 2 (Good offices and mediation), 3 (Conciliation), 4 (Task of the Conciliation Commission), 5 (Arbitration), 6 (Terms of reference of the Arbitral Tribunal) and 7 (...), plus articles 1 and 2 of the Annex respectively entitled "The Conciliation Commission" and "The Arbitral Tribunal".

21. The Commission 8/

22. As regards the topic "International liability for injurious consequences arising out of acts not prohibited by international law", 9/ the Commission had before it the eleventh report of the Special Rapporteur, Mr. Julio Barboza (A/CN.4/468) as well as his tenth report (A/CN.4/459) which had been introduced at the previous session.

23. After considering the two reports, the Commission established a Working Group under the topic to deal with the identification of dangerous activities. The conclusions of the Working Group were endorsed by the Commission in an amended form.

24. The Commission furthermore received from the Drafting Committee four articles under the topic, namely articles A (Freedom of action and the limits thereto), B (Cooperation), C (Prevention) and D (Liability and reparation). It adopted the articles recommended by the Drafting Committee in an amended form. 10/

8/ For an account of the treatment of the topic at the current session, see Chapter IV below.

9/ This topic was examined by the Commission at its 2397th to 2399th, 2413th to 2417th meetings, held between 8 and 13 June and between 7 and 13 July 1995.

10/ For an account of the treatment of the topic at the current session, see Chapter V below.

25. With respect to the topic "The law and practice relating to reservations to treaties", 11/ the Commission had before it the first report of the Special Rapporteur, Mr. Alain Pellet (A/CN.4/470 and Corr.1). After considering the report, the Commission endorsed the conclusions drawn from the debate by the Special Rapporteur as to the orientation of the future work on the topic. 12/

26. Matters relating to the programme, procedures and working methods of the Commission were discussed in the framework of the Planning Group of the Enlarged Bureau and in the Enlarged Bureau itself. The relevant decisions of the Commission are to be found in Chapter VII of the report, which also deals with cooperation with other bodies and with certain administrative and other matters.

11/ This topic was examined by the Commission at its 2400th to 2404th, 2406th, 2407th, 2412th and 2416th meetings held between 14 and 22 June and between 28 June and 13 July 1995.

12/ For an account of the treatment of the topic at the current session, see Chapter VI below.